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Supreme Court of the United States.

October Term, 1930.

No. 57.

Story Parchment Company

v.

The Paterson Parchment Paper Company and Kalamazoo Vegetable Parchment Company.

MOTION FOR COUNSEL FEES AND BRIEF IN SUPPORT THEREOF.

EDWARD O. PROCTOR,
ISADORE LEVIN,
EDWARD C. PARK,
Attorneys for Petitioner.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 57.

STORY PARCHMENT COMPANY

v.

THE PATERSON PARCHMENT PAPER COMPANY AND KALAMAZOO VEGETABLE PARCHMENT COMPANY.

MOTION FOR COUNSEL FEES.

Now comes Story Parchment Company, the petitioner in this Court and plaintiff in the District Court for the District of Massachusetts, and says that on February 24, 1930, this Court rendered a decision reversing a judgment of the Circuit Court of Appeals for the First Circuit against the petitioner and affirming the judgment of said District Court for the District of Massachusetts in favor of the petitioner; that the cause of action declared upon is one arising under the anti-trust laws of the United States; that the judge of said District Court, pursuant to the statute in such case made and provided, directed that there should be included in the costs of suit a reasonable attorney's fee in the amount of $27,500 to cover services in the District Court (R. 606); that the petitioner has since required and been put to further expense for the services of counsel in the Circuit Court of Appeals and in this Court;

Wherefore the petitioner moves that this Court by its mandate fix a reasonable attorney's fee for services in the Circuit Court of Appeals and in this Court, or direct the District Court to establish and determine such a fee, and to include the same within the costs of suit, or make such other order in the premises as may seem proper.

STORY PARCHMENT COMPANY,
By its Attorney,
EDWARD O. PROCTOR.

Supreme Court of the United States.

OCTOBER TERM, 1930.

No. 57.

STORY PARCHMENT COMPANY

v.

THE PATERSON PARCHMENT PAPER COMPANY AND KALAMAZOO VEGETABLE PARCHMENT COMPANY.

BRIEF IN SUPPORT OF MOTION.

The petitioner, plaintiff below, being entitled to recover damages against the defendants is entitled also to "the cost of suit, including a reasonable attorney's fee."

15 *U.S. Code*, sec. 15 (Act of October 15, 1914, sec. 4):

> "Any person who shall be injured in his business or property by reason of anything forbidden in the anti trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

A reasonable attorney's fee should include compensation not only for services in the trial Court, but also for those in the appellate Courts. Certainly, no one would deny that this would be true as between attorney and client.

But in this case the only allowance that has been made was for services in the District Court. It was not then clear that services in an appellate Court would be required, or what their character and extent would be, so that no part of the allowance made by the district judge can be considered as compensation for services to be rendered in the Circuit Court of Appeals or in this Court.

Accordingly a further allowance should be made, unless the statute intends that only an attorney's fee for services in the trial Court should be awarded.

There is no reason for implying any such limitation in the statute. The Act is in this respect in no sense a penal one. As has been said of similar statutes:

> "Manifestly, the purpose is merely to require the defendant to reimburse the plaintiff for a part of his expenses not otherwise recoverable as 'costs of suit.' So far as it goes, it imposes only compensatory damages upon a defendant who, in the judgment of the legislature, unreasonably delays and resists payment of a just demand. The outlay for an attorney's fee is a necessary consequence of the litigation and since it must fall upon one party or the other, it is reasonable to impose it upon the party whose refusal to pay a just claim renders the litigation necessary. The allowance of ordinary costs of suit to the prevailing party rests upon the same principle."
>
> *Missouri, K. & T. R. Co.* v. *Cade*, 233 U.S. 642, 651.

And again:

> "The contention that the provision for an attorney's fee for services in the suit is invalid as being purely arbitrary and as imposing a penalty for merely failing to pay a debt is without merit . . . One of its purposes

is to promote a close observance by carriers of duties so imposed; and that there is also a purpose to encourage the payment, without suit, of just demands does not militate against its validity."

Meeker & Company v. *Lehigh Valley R.R. Co.*, 236 U.S. 412.

Manifestly, if the purpose of the statute is to afford compensation for the outlay required to litigate a just claim, the compensation awarded should include the expense of proceedings in the appellate Courts.

It has been so held:

American Can Co. v. *Ladoga Canning Co.*, 44 Fed. (2d) 763, 773 (C.C.A. 7):

"The District Court, however, could not and doubtless did not take into consideration, the uncertain factor of a possible appeal, nor the legal services which might be rendered in case an appeal was prosecuted. Since the judgment was entered in the District Court, defendant has taken this appeal, and plaintiff's attorneys have rendered additional necessary and substantial legal services. Plaintiff should be allowed their reasonable value, which we fix at $3,500.

"The statute authorizing plaintiff's recovery of reasonable attorneys' fees directs their inclusion as a part of the costs. We find nothing in this statute which limits this allowance to services rendered in the District Court. Its terms are broad enough to include plaintiff's reasonable attorneys' fees necessarily incurred in any court wherein the cause was pending. A similar construction has been placed on a similar statute. *Davis* v. *Parrington*, (C.C.A.) 281 F. 10, 17; *Louisville & N. R. Co.* v. *Dickerson* (C.C.A.) 191 F. 705, 712."

As pointed out in the language just quoted, the decisions under those provisions of Interstate Commerce Act allowing "a reasonable attorney's fee" in suits to enforce orders of the Commission are to the effect that an additional allowance should be made for services in an appellate Court.

Davis v. *Parrington*, 281 Fed. 10, 17 (C.C.A. 9).
N.Y., N.H. & H. R.R. Co. v. *Ballou*, 242 Fed. 862, 868 (C.C.A. 9).
Louisville & N. R.R. Co. v. *Dickerson*, 191 Fed. 705, 712 (C.C.A. 6).
Mills v. *Lehigh Valley R. Co.*, 226 Fed. 812, 814 (D.C. E.D. Pa.).

The statute dealt with in those cases (49 U.S. Code, sec. 16 (2)), provided:

> ". . . If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit."

It is submitted that the particular provision quoted is in substance identical with that in the anti-trust laws here dealt with. In the first three cases quoted, however, an additional attorney's fee was allowed in the Circuit Court of Appeals; in the last it was allowed in the District Court. Though the right to such an allowance seems clear, it is uncertain whether it should be made by this Court or under the mandate of this Court in the District Court. The question of practice ought now to be settled.

Respectfully submitted,

EDWARD O. PROCTOR,
ISADORE LEVIN,
EDWARD C. PARK,
Attorneys for Petitioner.

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CHARLES ELMORE C

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 57

STORY PARCHMENT COMPANY

v.

THE PATERSON PARCHMENT PAPER COMPANY
AND
KALAMAZOO VEGETABLE PARCHMENT COMPANY

BRIEF FOR DEFENDANTS IN OPPOSITION TO PLAINTIFF'S MOTION FOR ALLOWANCE OF COUNSEL FEES

The statute provides for "a reasonable attorney's fee." It does not provide for more than one.

The judgment which has been affirmed is that this attorney's fee is $27,500.00 (R. 14).

The Court fixed this as "a reasonable attorney's fee" (R. 13).

It was not limited to the services in the District Court. It was evident that services would be required on appeal to dispose of the pending exceptions. The allowance was very large, — over forty percent of the amount of damages which the jury found that the plaintiff had sustained (R. 13). No precedent appears for so very large a percentage.

To multiply by three requires no services of learned counsel. The statute does it on a simple motion.

By the judgment, the plaintiff is to receive full payment of this attorney's fee, full payment of the damages which the plaintiff has sustained and interest thereon, and $130,000 and interest as two hundred percent clear profit. This is an ample fund out of which to pay all counsel fees after which there will remain a very large unearned profit to the plaintiff.

The requirements of the statute have been satisfied. There is no requirement of justice that the plaintiff should profit further at the expense of the defendants.

The plaintiff's motion should be denied.

Respectfully submitted,

EDWARD F. McCLENNEN,
JOSEPH M. DOHAN,

Attorneys for Defendants.

March 14, 1931.